I MUA I TE KOOTI TAIAO O AOTEAROA TĀMAKI MAKAU RAU **ENV-2019-AKL-117**

BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY

UNDER	the Resource Management Act 1991 (the **RMA**)
AND	
IN THE MATTER	of an appeal under clause 14(1), Schedule 1 of the RMA
AND	
IN THE MATTER	of section 274 of the RMA
BETWEEN	**BAY OF ISLANDS MARITIME PARK INCORPORATED V NORTHLAND REGIONAL COUNCIL**
	ENV-2019-AKL-117
	THE ROYAL FOREST AND BIRD PROTECTION SOCIETY INCORPORATED V NORTHLAND REGIONAL COUNCIL
	ENV-2019-1KL-127
	Appellants
AND	**NORTHLAND REGIONAL COUNCIL**
	Respondent

REBUTTAL EVIDENCE OF LISA MARIE TE HEUHEU ON BEHALF OF TE OHU KAI MOANA TRUSTEE LIMITED

22 JUNE 2021

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INTRODUCTION

1. Ko Lisa Marie Te Heuheu tōku ingoa.

2. He uri ahau nō Ngāti Raukawa, Ngāpuhi me Ngāti Maniapoto.

3. I am Te Mātārae (Chief Executive) of Te Ohu Kai Moana Trust (Te Ohu Kaimoana).

Qualifications and Experience

4. I confirm the qualifications and experience set out in my 14 May 2021 Statement of Evidence in Chief.

SCOPE OF EVIDENCE

5. This rebuttal evidence is based on a review of evidence prepared by Juliane Chetham (Patuharakeke Te Iwi Trust Board).

6. Ms Chetham supports the MPA provisions as they will allow for:

> "a collective and holistic approach more aligned to a Te Ao Māori world view and a Te Tiriti-based approach to recognise and provide for the relationship of hapū and our culture and traditions with our ancestral lands, water, sites, waahi tapu and other taonga in accordance with section 6(e) RMA".

7. I speak to each point in turn:

   (a) A Te Ao Māori Worldview;

   (b) A Tiriti-based approach; and

   (c) section 6(e) of the RMA.

A Te Ao Māori Worldview

8. Ms Chetham supports the MPA provisions as they will allow for a collective and holistic approach more aligned to a Te Ao Māori world view.

9. In my view, a Te Ao Māori worldview requires consideration and full expression of all Te Ao Māori perspectives and realities.

10. The MPA proposal does not grapple with the full impact for all Māori interests of what is proposed on:

    (a) whakapapa (ancestral lineage),

    (b) tino rangatiratanga, mana motuhake (sovereignty, self-determination, authority, independence, empowerment),

    (c) whanaungatanga (relationships),

    (d) mana whenua (sovereignty, prestige, responsibility, autonomy, status over land),

    (e) mana moana (sovereignty, prestige, responsibility, autonomy, status over water, oceans, marine environment),

    (f) manaakitanga (looking after, hosting, hospitality), and

    (g) taonga tuku iho (sustainable use and protection of treasures, resources, inter-generational equity).[1]

11. From a Te Ao Māori perspective it is arguable whether an MPA could or would achieve an ability for Māori to exercise the extent of their rights associated with whenua, moana and all

[1] I note that these are common translations for these concepts, but do not convey their full meaning.

the resources that are within the natural environment. The critical factor from our perspective is that the right to fish, the traditional knowledge associated with fishing practice, customary fishing (both commercial and non-commercial) fall within a full Te Ao Māori perspective. I do not think that this can appropriately be provided for within this MPA context nor the RMA.

12. I agree that a "ki uta ki tai" (mountains to sea) holistic perspective is important. This has been reiterated to us by kaitiaki across Aotearoa, but to suggest that species are separated from their habitat and whakapapa under the Fisheries Act 1996 is to misunderstand the legislation. The rebuttal evidence of Mr Drummond sets out the link between fisheries and their habitats provided for under the Fisheries Act at paragraphs 21 to 23.

13. What I would add is, by virtue of its design all natural resources legislation, including the RMA and Fisheries Act, have isolated the context in which we are able to express our full view of te taiao as kaitiaki.

14. In my opinion though, it is in this context far more constructive to work within the bounds offered by the Fisheries Act 1996. It provides a pathway where we are improving legislative responsibilities rather than trying to add another layer to an already complex and fraught set of responsibilities under the RMA, which is ill-equipped to deal with fisheries management.

A Te Tiriti o Waitangi-based approach

15. My view is that the proposed MPAs are not Te Tiriti o Waitangi-based.

16. By Te Tiriti o Waitangi the Crown confirmed and guaranteed to the Chiefs, tribes, and individual Māori full exclusive and

undisturbed possession and te tino rangatiratanga of their fisheries.[2]

17. The Māori Fisheries Settlement, through the 1992 Deed and associated legislation:

    (a) is a settlement of Māori claims to fisheries under the Te Tiriti o Waitangi;

    (b) expressly recognises tino rangatiratanga in respect of Māori fisheries;

    (c) involved Crown recognition that traditional fisheries are of importance to Māori and that the Crown's Treaty duty is to develop policies to help recognise use and management practices and provide protection for and scope for exercise of rangatiratanga in respect of traditional fisheries.[3]

18. The imposition of these controls will undermine the Tiriti rights envisaged in the Māori Fisheries Settlement.

19. There has been no engagement as Tiriti partners with Te Rūnanga Ā Iwi Ngāpuhi, the Ngāti Wai Trust Board, other relevant hapū whose rohe moana and Treaty right to fish are affected, or with Te Ohu Kai Moana as representative of Māori quota holders in the affected area.

20. Te Tiriti fishing rights have therefore been ignored in the preparation of the proposed MPAs.

21. In my view, the proposed MPAs including the process by which they were proposed, is contrary to Tiriti principles of tino rangatiratanga, partnership, active protection of taonga, options and an expectation that, where redress is offered it is

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[2] Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, Preamble (a).
[3] Above, Preamble (k).

not undermined.

22. For all of the above reasons, I consider that the proposed MPAs cannot be said to be Te Tiriti o Waitangi-based.

Section 6(e)

23. Ms Chetham supports the MPA provisions as they will allow for a collective and holistic approach to recognise and provide for the section 6(e) relationship.

24. I consider that the approach is not collective and holistic, in that the approach to the section 6(e) relationship is one-dimensional.

25. I have previously noted that, in the RMA context, the section 6(e) obligation to recognise and provide for the Māori relationship with ancestral lands and waters also extends to the very active and real relationship Māori have with the moana as a source of sustenance.

26. It is important that this is not lost sight of; that Māori are not presented as one-dimensional in the way that we engage with our moana. As I have said, the Māori right to fish, and our customary connection to that practice, are relevant to Section 6(e) of the RMA.

27. I also consider that the proposed MPAs are inadequate and inappropriate for providing for the above section 6(e) relationship. To do that, one must know about the relationship. Instead, absent a Schedule 1 process and with support from Ngāti Kuta, Patukeha and Patuharakeke hapū only (acknowledging that the rohe moana of Patuharakeke is not within the proposed MPA areas at all),[4] the appellants have imposed the proposed provisions through an appeal process with very limited prior opportunity for participation to

[4] Te Uri o Hikihiki hapū later joined as a section 274 party.

ensure that the Māori right to fish, and our customary connection to that practice, was fully understood.

28. In the 10 years that the proposed areas would be subject to MPAs, where controls are imposed on fishing, the Northland Regional Council will have control rather than section 6(e) relationship holders. This includes Ngāti Kuta and Patukeha. In my view, this diminishes the exercise of hapū and iwi rangatiratanga in respect of traditional fisheries.

L M Te Heuheu
22 June 2021